

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

TERRY LEE STARR,)
)
Movant,)
)
v.) Case No. CV409-030
) [CR407-002]
UNITED STATES OF AMERICA,)
)
Respondent.)

REPORT AND RECOMMENDATION

Before the Court is the government's motion to dismiss Terry Lee Starr's 28 U.S.C. § 2255 motion.¹ (Doc. 4.) the government points out that since Starr's federal conviction and sentence are currently on direct appeal before the Eleventh Circuit, *United States v. Starr*, No. 08-10743-HH (11th Cir. filed Feb. 14, 2008), his § 2255 motion should be dismissed as premature. (Doc. 4; doc. 3 (Starr's counsel's statement affirming that an appeal is pending).)

¹ Starr, currently incarcerated at FCI Estill, in South Carolina, filed the § 2255 motion to seek relief from his February 2008 federal conviction for possession of a firearm by a convicted felon and possession of a firearm with an obliterated serial number. (Doc. 1 at 1.) He raises two claims of ineffective assistance of counsel (one regarding sentencing and the other regarding the presently pending appeal), and he claims that the evidence against him was insufficient to sustain his conviction. (*Id.* at 4-7.)

Absent extraordinary circumstances, a movant may not seek collateral relief while his direct appeal is pending, as the appeal may render the motion moot. *United States v. Khoury*, 901 F.2d 948, 969 n.20 (11th Cir. 1990) (§ 2255 motion will not be entertained during pendency of a direct appeal); *Vita v. United States*, No. CV206-408, 2006 WL 2460705 at *1 (M.D. Fla. Aug. 23, 2006) (unpublished) (citing *Fernandez v. United States*, 941 F.2d 1488, 1491 (11th Cir. 1990)). Indeed, this Court is without jurisdiction to consider such claims. *United States v. Dunham*, 240 F.3d 1328, 1329-1330 (11th Cir. 2001). Starr's § 2255 motion has not indicated that any extraordinary circumstances justify immediate review of his run-of-the-mill § 2255 motion, so the government's motion to dismiss should be **GRANTED** and this case should be **DISMISSED** without prejudice to Starr's right to file a § 2255 motion after the disposition of his direct appeal.

SO REPORTED and RECOMMENDED this 24th day of March, 2009.



UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA